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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. ~~801~~ 71

E. B. ARENDER, MARCUS N. STRONG, NEAL McEACHARN, JR., ET AL.,

Appellants,

vs.

KINGWOOD OIL COMPANY, SOHIO PETROLEUM COMPANY, GEORGE A. MITCHELL, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS BY CARL B. ANDERSON AND GEORGE R. MITCHELL.

GEO. GUNBY,
ALLEN B. GUTHRIE,
Counsel for Appellees.

SUPREME COURT OF LOUISIANA

No. 40,441

SOHIO PETROLEUM COMPANY

vs.

V. S. & P. R. R., ET ALS.

GEORGE R. SUMLIN, ET AL.,

Appellants,

vs.

KINGWOOD OIL COMPANY, ET AL.,

Appellees,

AND

26 CONSOLIDATED CASES

JURISDICTIONAL STATEMENT OF APPELLEES, CARL B. ANDERSON AND GEORGE R. MITCHELL, DENYING JURISDICTION OF UNITED STATES SUPREME COURT AND MOTION TO DISMISS.

MAY IT PLEASE THE COURT:

Carl B. Anderson and George R. Mitchell, Appellees, with respect, represent that the United States Supreme Court is without jurisdiction on appeal herein under the provisions of 28 U.S.C. 1257, for the following reasons:

I. Federal Question Not Timely Presented

The Supreme Court of Louisiana in finding and holding in this case (reported 62 So. 2d 615) that drilling and com-

pletion by lessee of a well capable of producing gas in paying quantities upon one of the several tracts forming the drilling and production unit consisting of the governmental one-sixteenth section, NE¼ of SE¼, S. 13, T. 17N., R. 9E., as established by orders of the Louisiana Commissioner of Conservation pursuant to provisions of La. Acts 1940, No. 157 (La. Rev. Stat. 30: 2-20), within the year from date of such leases, constituted a drilling upon and performance of the obligations due upon each of the several separate tracts composing such unit and rendered inapplicable the provisions of Article 5 of said leases relating to drilling of a dry hole or cessation of production from the lease, once begun, because of failure of such production to continue, was an affirmation of the judgment and decision of the Fifth Judicial District Court, wherein the cases were tried upon the pleadings and evidence adduced thereon, as will appear from the Reasons for Judgment rendered by that court upon the original trial before it. And in neither the original pleadings, nor in the application of plaintiffs (appellants) for new trial or rehearing in the District Court, nor in appeal to the Supreme Court of Louisiana, was it suggested or asserted that the interpretation of the statute in question, of the orders of the Commissioner on authority thereof, and of the provisions of Article 5 of the leases by the District Court pursuant to the pleadings and the issues pitched and urged therein by defendants (appellees here) denied to the plaintiffs (appellants here) due process of law under the Fourteenth Amendment to the Federal Constitution; the constitutional question, first presented in motion for rehearing in the Supreme Court of Louisiana, was not, therefore, raised at the first opportunity, when the point involved was first presented for adjudication in courts of the State, and attempt, as an afterthought, to in-

ject a plea of unconstitutionality comes too late to afford basis for jurisdiction of the United States Supreme Court.

Radio Station WOW, Inc. v. *Johnson*, 326 U. S. 120 128, 89 L. Ed. 2092, 2100, 65 S. Ct. 1475;

American Surety Co. v. *Baldwin*, 287 U. S. 156, 162, 77 L. Ed. 231, 235, 53 S. Ct. 98;

Citizens National Bank v. *Durr*, 257 U.S. 99, 106, 66 L. Ed. 149, 152, 42 S. Ct. 15;

Godchaux Company v. *Estopinal*, 251 U. S. 179, 181, 64 L. Ed. 213, 214, 40 S. Ct. 116.

II. Decision on Questions of Local Law Rests on Adequate Non-Federal Grounds

Article 11 of each of the leases sued on provides that "all terms and express or implied covenants of this lease shall be subject to all Federal and State Laws, Executive Orders, Rules or Regulations, and this lease shall not be terminated, in whole or in part, nor Lessee held liable in damages, for failure to comply therewith, if compliance is prevented by, or if such failure is the result of, any such Law, Order, Rule or Regulation," and by the well-established rule of law in Louisiana provisions for operations under oil, gas and mineral leases upon lands in that State are subject to, superseded and controlled by orders and regulations of the Commissioner of Conservation issued pursuant to the laws of the State, such as La. Acts 1940, No. 157 (La. Rev. Stat. 30: 2-20).

Hunter Co. v. *McHugh*, 202 La. 97, 11 So. 2d 495, 320 U. S. 222, 88 L. Ed. 5, 64 S. Ct. 19;

Hood v. *Southern Production Co.*, 206 La. 642, 19 So. 2d 336;

Hardy v. *Union Producing Co.*, 207 La. 137, 20 So. 2d 734;

Alston v. *Southern Production Co.*, 207 La. 370, 21 So. 2d 383;

Crichton v. *Lee*, 209 La. 561, 25 So. 2d 229;
Hunter Co. v. *Shell Oil Co.*, 211 La. 893, 31 So. 2d 10;
Hunter Co. v. *Vaughan*, 217 La. 459, 46 So. 2d 735;
LeBlanc v. *Danciger Oil & Ref. Co.*, 218 La. 463, 49 So. 2d 855;
Everett v. *Phillips Petroleum Co.*, 218 La. 835, 51 So. 2d 87.

It is the further established and recognized rule of law in Louisiana that failure of lessee to pay rentals and royalties due under an oil, gas and mineral lease does not afford grounds for peremptory cancellation of the lease, but that the right to cancellation is subject to judicial control under the circumstances presented.

Brewer v. *Forest Gravel Co.*, 172 La. 828, 135 So. 372;
Tyson v. *Surf Oil Co.*, 195 La. 248, 196 So. 336, 341;
Brown v. *Sugar Creek Syn.*, 195 La. 865, 197 So. 583, 592;
Risinger v. *Arkansas-Louisiana Gas Co.*, 198 La. 101, 3 So. 2d 289, 292;
Rudnick v. *Union Producing Co.*, 209 La. 945, 25 So. 2d 906, 908.

Thus, where the parties have been fully heard in the courts of the State in the regular course of judicial proceedings, a decision involving matters of state law does not present a Federal question reviewable by the United States Supreme Court. And where, as here, the state court's decision rests on an adequate and independent non-federal ground, the Supreme Court of the United States is without jurisdiction to review and consider correctness of the non-federal ground of the state decision.

Hammerstein v. *Superior Court of Cal.*, 340 U. S. 622, 623, 95 L. Ed. 586, 587, 71 S. Ct. 521;

Skelly Oil Co. v. *Phillips Petroleum Co.*, 339 U. S. 667, 674, 94 L. Ed. 1194, 1201, 70 S. Ct. 876;
Radio Station WOW, Inc. v. *Johnson, supra;*
Lynch v. *New York*, 293 U. S. 52, 54, 79 L. Ed. 191, 193, 55 S. Ct. 16;
Brinkerhoff-Faris Trust & Savings Co. v. *Hill*, 281 U. S. 673, 680, 74 L. Ed. 1107, 1113, 50 S. Ct. 451.

III. Appeal Moot, Substantial Federal Question Not Involved

But even though unconstitutionality of the Louisiana statute were timely and properly raised, this appeal is moot and does not involve a substantial Federal question as the Louisiana statute in question and like statutes of other states have been held to provide a valid exercise of power by the States to regulate production of oil and gas so as to secure apportionment among landowners of the migratory gas and oil underlying their land.

Hunter Co. v. *McHugh*, 320 U. S. 222, 88 L. Ed. 5, 64 S. Ct. 19;
Lindsley v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 55 L. Ed. 369, 31 S. Ct. 337;
Baudini Petroleum Co. v. *Superior Court*, 284 U. S. 8, 76 L. Ed. 136, 52 S. Ct. 103;
Champlin Ref. Co. v. *Corporation Commission*, 286 U. S. 210, 76 L. Ed. 1062, 52 S. Ct. 559;
Thompson v. *Consolidated Gas Utilities Corp.*, 300 U. S. 55, 81 L. Ed. 510, 57 S. Ct. 364;
Patterson v. *Stanolind Oil & Gas Co.*, 305 U. S. 376, 83 L. Ed. 231, 59 S. Ct. 259;
Cities Service Gas Co. v. *Peerless Oil & Gas Co.*, 340 U. S. 179, 95 L. Ed. 190, 71 S. Ct. 215;
Palmer Oil Corp. v. *Amerada Petroleum Corp.*, 342 U. S. 390, 96 L. Ed. 1022, 72 S. Ct. 842.

MOTION TO DISMISS

And for the reasons set forth above, Appellees move and pray that this appeal be dismissed and, in the alternative, that the judgment appealed from be affirmed because the question presented has been foreclosed by prior decisions and is so wanting in substance as not to need further argument.

Leonard v. *Vicksburg, Shreveport & Pac. R. R. Co.*, 198 U. S. 416, 49 L. Ed. 1108, 25 S. Ct. 750;

Boston v. *Jackson*, 260 U. S. 309, 67 L. Ed. 274, 43 S. Ct. 129;

McArthur v. *United States*, 315 U. S. 787, 86 L. Ed. 1192, 62 S. Ct. 915.

Respectfully submitted,

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